

Title 1. Office of Administrative Hearings

NOTICE OF PROPOSED RULEMAKING

The Regulating Authority (consisting of the Departments of General Services, Transportation, and Water Resources, administered by the Office of Administrative Hearings) proposes to adopt the amended regulation described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Regulating Authority proposes to amend section 1395 of Chapter 4 of Division 2 of Title 1 of the California Code of Regulations. The proposed regulation will clarify an existing Public Works Contract Arbitration regulation.

PUBLIC HEARING

At this time, the Regulating Authority has not scheduled a public hearing. Any interested person or his or her duly authorized representative may request a hearing pursuant to Government Code section 11346.8 no later than 15 days prior to the close of the comment period. Requests for a public hearing should be directed to the contact person indicated below.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to OAH. All written comments must be received no later than 5:00 p.m. on July 15, 2005. Written comments for the Regulating Authority's consideration should be directed to the contact person indicated below.

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for a copy of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based should be directed to:

Margaret A. Farrow
Office of Administrative Hearings
560 J Street, Suite 300
Sacramento, CA 95814
(916) 445-4926

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The entire rulemaking file will be available for inspection and copying throughout the rulemaking process at the above address during regular business hours. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, the initial statement of reasons, and any data relied upon. A copy may be obtained by contacting Margaret A. Farrow at the address or

telephone number listed above or from the OAH web site, at
<http://www.dgs.ca.gov/oah/>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the comment period, the Regulating Authority may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text with changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the Regulating Authority adopts the regulation. Requests for copies of any modified regulation should be sent to the attention of Margaret A. Farrow at the address indicated above. The Regulating Authority will accept written comments on the modified regulation for 15 days after the date on which it is made available.

INFORMATIVE DIGEST / OVERVIEW IN PLAIN ENGLISH

In 1982, the Legislature created a method of resolving contract claims under the State Contract Act by arbitration. The Office of Administrative Hearings (OAH), a division of the Department of General Services, administers this program, generally referred to as the Public Works Contract Arbitration (PWCA) Program. OAH may, jointly with the Departments of General Services, Transportation and Water Resources, modify, revise, or repeal uniform regulations to implement the provisions of Articles 7.1 (commencing with Section 10240) and 7.2 (commencing with Section 10245) of Chapter 1 of Division 2 of the Public Contract Code. These regulations may include but need not be limited to:

- (a) The method of initiating arbitration.
- (b) The place of hearing based upon the convenience of the parties.
- (c) Procedures for the selection of a neutral arbitrator.
- (d) The form and content of any pleading.
- (e) Procedure for conducting hearings.
- (f) The providing of experts to assist the arbitrator in the event the assistance is needed.
- (g) The content of the award.
- (h) Simplified procedures for claims of fifty thousand dollars (\$50,000) or less.

The regulation revision proposed reflects an ongoing effort by the Regulating Authority to keep the PWCA regulations responsive to the needs of the parties and the expeditious operation of the arbitration program.

AUTHORITY AND REFERENCE

The authority for the proposed regulations is found in Public Contract Code sections 10240.5 and 10245.2 which specify the Department of General Services, Transportation, and Water Resources may modify, revise, or repeal uniform regulations to implement Articles 7.1 and 7.2 of the Public Contract Code. The primary references for the proposed regulations are found in Articles 7.1 (commencing with Section 10240) and 7.2 (commencing with Section 10245) of Chapter 1 of Division 2 of the Public Contract Code. Additional references are to Government Code section 14655, Civil Code section 1670, and Executive Order B50-78.

DISCLOSURES/FISCAL IMPACT REGARDING THE PROPOSED ACTION

The Regulating Authority has made the following determinations:

- ◆ *MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS:* The proposed regulation will not impose any new mandated programs on local agencies or school districts.
- ◆ *COST OR SAVINGS TO LOCAL AGENCIES OR SCHOOL DISTRICTS:* None.
- ◆ *OTHER NON-DISCRETIONARY COSTS TO LOCAL AGENCIES:* None.
- ◆ *COST OR SAVINGS TO STATE AGENCIES:* The regulation proposed herein does not impose additional cost on state agencies. The proposed regulation amend existing procedures for the arbitration of state contract claims authorized by statute. To the extent that the revised regulation clarifies procedures on matters which have been heretofore disputed, they may result in cost savings in shortening arbitration hearings or the preparation time therefor.

- ◆ *COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE:* None.

- ◆ *ASSESSMENT OF ECONOMIC IMPACT ON BUSINESSES:* This proposed regulation will not have a significant statewide adverse economic impact on business directly affecting business, including the ability of California businesses to compete with businesses in other states. In addition, the regulation will not adversely affect the creation or elimination of jobs within California, the creation of new businesses or the elimination of existing business within California, or the expansion of businesses currently doing business in California.

- ◆ *ASSESSMENT OF ECONOMIC IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:* The Regulating Authority is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- ◆ *ASSESSMENT OF ECONOMIC IMPACT ON SMALL BUSINESSES:* This proposed regulation may have a minimal economic impact on small businesses.

- ◆ *FACTS RELIED UPON IN SUPPORT OF FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS:* This regulation does not significantly alter or increase any fees or costs currently existing by regulation or statute. This regulation does not appreciably increase the cost of the arbitrations.

- ◆ *EFFECT ON HOUSING COSTS:* None.

- ◆ *USE OF SPECIFIC TECHNOLOGIES OR EQUIPMENT:* None.
- ◆ *TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT OR DOCUMENT RELIED UPON IN PROPOSING THE REGULATIONS:* None.

- ◆ **CONSIDERATION OF ALTERNATIVES:** In accordance with Government Code section 11346.5, subdivision (a)(13), the Regulating Authority must determine that no reasonable alternative considered by the Regulating Authority or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected persons than the proposed action.

The purpose of the proposed regulation is to specify the qualifications for arbitrators who will arbitrate state contract claims. The Regulating Authority has been unable to identify any alternative to the proposed regulation that would be as effective and less burdensome to affected persons. The Regulating Authority invites interested persons to present statements or arguments regarding alternatives to the proposed regulation during the written comment period.

When it is prepared, the final statement of reasons can be obtained by contacting Margaret Farrow at the Office of Administrative Hearings, 560 J Street, Suite 300, Sacramento CA 95814. Phone (916) 445-4926.